

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3128 of 1992

with

SPECIAL CIVIL APPLICATION No 3129 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MADHAVLAL PRABHUDAS PATEL

Versus

COMMR OF HIGHER EDUCATION

Appearance: (In both Special Civil Applications)

MR P. VYAS for MR BS PATEL for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/08/2000

ORAL JUDGEMENT

#. These two petitions raise common questions and have

been argued together. The petitioner of Special Civil Application No.3128 of 1992 was serving as a Head Master in the respondent No.3-School for more than 13 years and challenges the order passed by respondent No.2 on 7.4.1992 at Annexure-A to the petition. In that order, there is a reference to a complaint filed on 26.3.1992 and to the fact that the petitioners of these two petitioners were being prosecuted for certain offences. It is stated in the said order that the school management should take action under Rule 27(7)(g) of the Secondary Education Regulations, 1974.

#. The petitioner of Special Civil Application No.3129 of 1992 was serving as a teacher in the respondent No.3-School for more than 16 years and he too has challenged the same order dated 7.4.1992.

#. It appears that there was a complaint filed in the Court of Judicial Magistrate, Kheralu, against these two petitioners and others for offences under Sections 120B, 384, 500, 506, 406 and 114 of the Indian Penal Code on 10.7.1990 and the learned Magistrate directed investigation under Section 156(3) of the Criminal Procedure Code in the matter. As said in the petitions, the case is pending in the Court of Judicial Magistrate, First Class and till the date of filing of petitions, there was no chargesheet submitted.

#. The learned counsel appearing for the petitioners in these two petitions contended that there was no occasion for the respondent No.2 to give a direction for proceeding against the petitioners under Regulation 27(7)(g) of the said Regulations because action could be taken thereunder only if the requirements of sub-clauses (i) to (iv) or any of them were satisfied. In the present case, according to the learned counsel, there has not been any conviction as contemplated by sub-clause (i) of clause (g) of Regulation 27(7) of the said Regulations and therefore, there was no occasion for issuing any such direction.

#. Under Regulation 27(7)(g)(i), it has been provided that a Head Master or a member of teaching and non-teaching staff shall be liable to be dismissed if he has been convicted of an offence involving moral turpitude. In the present case, it appears that when the letter dated 7.4.1992 was addressed to the respective schools, the petitioners were not even chargesheeted as stated on oath in their petitions. If that be so, they could not have been proceeded against under Regulation 27(7)(g)(i) of the said Regulations because that could be

done only when there has been conviction of an offence involving moral turpitude. However, there does not appear to have been taken any action under the said provision and the tenor of the said letter appears to be that if the requirements of the provisions are satisfied, then alone an action could be taken. In this view of the matter, the petitions are premature. Needless to say that action will be taken only in accordance with the provisions of the Act and the Regulations. Therefore, no relief is required to be given at this premature stage in any of these two petitions. Both the Special Civil Applications are rejected. Rule is discharged in each of them with no order as to costs.

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(sunil)